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Clause Paramount and Effect of Package Limitation for Cargo Damage

In the recent case in Court of Appeal in England, The Superior Pescadores [2016] Civ 101 (Comm), 24 Feb 2016, involving a shipment of cargo under six bills of lading which suffered damage on board the vessel during its voyage from Antwerp, Belgium to Yemen in January 2008 was heard from an appeal from the Commercial court

The bill of lading contained the following Paramount clause:

> *"The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply."*

The contract was agreed by the parties to subject to English law and that have incorporated Hague-Visby Rules 1971 by law. In addition, the port of shipment, Belgium has also incorporated Hague-Visby Rules. However, the cargo owners, relying on Clause Paramount in the bills of lading wanted to argue that Hague Rules 1924 will be applicable as the package limitation figure is higher in the Hague Rules.

The claimant cargo owners recognized that, as a matter of English law(agreed between the parties), the Hague-Visby Rules would apply by virtue of the Carriage of Goods by Sea Act 1971 (section1 (2)) and Article X of the Rules themselves. However, Article IV, rule 5(g) of those Rules entitle the parties to contractually agree on a higher package limitation. Therefore, the cargo owners argued that by having such a Clause Paramount in the bills of lading, Art(IV) 5 g is applicable as if the parties have agreed for higher package limitation.

Article IV, rule 5(g) of the Hague-Visby Rules, which states:

> *"By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph."*

The Commercial Court considered the case "Agios Lazaros" [1976] 2 Lloyd's Rep 47, where it was held that what shipping men would consider in general would be the final authority for which rules to be applicable. In practice, Hague Visby rules are considered as incorporated and therefore English Court have no reason to depart from that belief. In this case, however, as a result of previous cases, judge decided that the Hague Rules are incorporated (not Hauge-Visby Rules), judge further commented that parties know that Hague Rules would be ineffective as Hague-Visby Rules will be applicable mandatorily.

But does that bring higher package limitation figure by the back door? The Owners submitted that Article IV, rule 5(g) of the Hague-Visby Rules is not applicable in ambiguous cases like this. The increase in package limitation agreed between the parties should be a certainty from the start for Article IV, rule 5(g) to be applicable.

Judge in the High Court was not satisfied that the agreement on higher package limitation was agreed and was certain enough from the start that parties have agreed there would be higher limit than the Hague -Visby Rules. He cited the above issues of even having an issue as to which Rules will be applicable.

On appeal, the Court of Appeal held that in any case where a bill of lading is issued (i) incorporating the HR as enacted in the country of shipment; and (ii) the country of shipment has enacted the HVR, this should be considered as incorporating the Hague Visby Rules. The Court of Appeal therefore made it very simple.

Therefore, The Court of Appeal made it very simple to construct and interpret the Clause Paramount for much needed certainty in the market, and therefore, only the lower limitation package in Hague-Visby Rules will be applicable.

FDD department of Andrew Liu based in Shanghai advice to his clients are as follows:

a) Check the Clause paramount clause in bill of lading, in charter parties (whether it is applicable to charterparty or bills of lading issued under the relevant Charterparty?).
b) Parties should try to settle the matter as soon as possible as legal costs are escalated by legal law firms.
c) FDD team recently saved lots of legal costs for its clients and managed to successfully obtain settlement with the cargo owners, thereby saving a lots in legal costs and costs that would from part of deductibles of P and I clubs and lawyer fees, and not mention the clients having full control of the case from the start.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk